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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW MEXICO**

LINDA BERGEY and JAMES R. BERGEY, SR.,

Plaintiffs,

vs. No. CIV-05-0536 MCA/WPL

BOY SCOUTS OF AMERICA
d/b/a PHILMONT SCOUT RANCH BSA,

Defendant.

**ANSWER TO COMPLAINT FOR NEGLIGENCE RESULTING IN PERSONAL INJURIES AND MONETARY DAMAGES**

COMES NOW Defendant, Boy Scouts of America, d/b/a Philmont Scout Ranch BSA, (hereinafter BSA), by and through its attorneys of record, Butt Thornton & Baehr PC, by Alfred L. Green, Jr., Esq., and for its Answer to Plaintiffs' Complaint for Negligence Resulting in Personal Injuries and Monetary Damages (hereinafter Complaint) states as follows:

**ANSWER TO JURISDICTION, VENUE AND JURY TRIAL REQUEST**

1. In reply to Paragraph 1 of the Complaint, Defendant denies it owes damages to Plaintiffs in any amount. Defendant lacks sufficient knowledge or information with which to admit or deny the remaining allegations contained therein and, placing its denial on that basis denies same.

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2. In reply to Paragraph 2 of the Complaint, Defendant admits that to the extent jurisdiction is proper in the United States District Court for the District of New Mexico, venue is also proper.

3. In reply to Paragraph 3 of the Complaint, Defendant concurs in Plaintiffs' request for trial by jury.

## ANSWER TO THE PARTIES

4. In reply to Paragraph 4 of the Complaint, Defendant lacks sufficient knowledge or information with which to admit or deny the allegations contained therein and placing its denial on that basis denies the same.

5. In reply to Paragraph 5 of the Complaint, Defendant admits BSA is an organization chartered by the United States Congress with its principal place of business in Texas. Defendant further admits BSA owns and operates Philmont Scout Ranch in Colfax County, New Mexico. Defendant does not contest service.

6. In reply to Paragraph 6 of the Complaint, Defendant admits that various individuals are employed by Philmont Scout Ranch both year round and seasonally. Defendant lacks sufficient knowledge or information concerning the unidentified individuals alleged in Paragraph 6 of the Complaint to admit or deny the allegations therein; therefore, placing its denial on that basis, denies same.

**ANSWER TO GENERAL ALLEGATIONS**

7. In reply to Paragraph 7 of the Complaint. Defendant admits in July 2002 Plaintiff Linda Bergey was a participant in a Cavalcade horseback trek at Philmont Scout Ranch (hereinafter Philmont).

8. In reply to Paragraph 8 of the Complaint, Defendant admits on or about July 7, 2002, Plaintiff Linda Bergey and other Cavalcade participants were provided initial training for the Cavalcade trek. Defendant lacks sufficient knowledge or information with which to admit or deny the remaining allegations contained therein and, placing its denial on that basis, denies same.

9. The allegations in Paragraph 9 of the Complaint are admitted.

10. In reply to Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Complaint. Defendant states the allegations contained therein are incomplete, vague and partially inaccurate and confusing. Therefore, to that extent, Defendant denies the same.

**ANSWER COUNT I – NEGLIGENCE OF DEFENDANTS**

11. In reply to Paragraph 21 of the Complaint, Defendant realleges and incorporates by reference its responses to the remaining paragraphs of the Complaint.

12. In reply to Paragraph 22 of the Complaint, Defendant states the duties alleged therein are an incomplete and therefore misleading statement of law and to that extent are denied. Defendant further denies the packhorse at issue was not suitable as a packhorse for the Cavalcade trek. Each and every remaining allegation contained therein is denied.

13. In reply to Paragraph 23 of the Complaint, Defendant states that the duty alleged therein is an incomplete statement of law and, therefore, to that extent, denied.

14. The allegations of Paragraph 24 and 25 of the Complaint are denied.

15. In reply to Paragraph 26 of the Complaint, Defendant admits that to the extent the unidentified individuals were employees of BSA and Philmont, such individuals were acting within the course and scope of their employment.

16. In reply to Paragraph 27 of the Complaint, Defendant states the allegations contained therein are vague and not specific and, therefore, not susceptible to a response. Defendant denies BSA, Philmont and/or its employees were negligent or breached any duty to Plaintiffs herein.

17. In reply to Paragraphs 28, 29, 30 (no paragraph numbered 31), 32 and 33 of the Complaint, Defendant denies any acts of negligence or breach of any duties to Plaintiffs by Defendant or its employees. Defendant lacks sufficient knowledge or information with which to admit or deny any alleged injuries and/or damages suffered by Plaintiff Linda Bergey and placing its denial on that basis, denies same and demands strict proof thereof.

**ANSWER TO COUNT II – BREACH OF CONTRACT**

18. In reply to Paragraph 33 of the Complaint, Defendant realleges and incorporates by reference as if fully set forth herein its responses to the remaining paragraphs of the Complaint.

19. In reply to Paragraph 34 of the Complaint, Defendant admits Cavalcade horseback treks are conducted at Philmont in accordance with acceptable safety standards. Defendant further admits Plaintiffs were paying participants in a Cavalcade horseback trek. Each and every allegation contained therein not specifically admitted hereby is denied.

20. The allegations of Paragraph 35 of the Complaint are denied.

**ANSWER TO COUNT V – LOSS OF CONSORTIUM**

21. In reply to Paragraph 36 of the Complaint, Defendant realleges and incorporates by reference as if it was set forth herein its responses to the remaining paragraphs of the Complaint.

22. The allegations of Paragraph 37 of the Complaint are denied.

23. Each and every allegation of the Complaint not specifically admitted by Defendant or to which Defendant has otherwise responded is denied.

**AFFIRMATIVE DEFENSES**

1. As a separate and alternative affirmative defense, Defendant states that the allegations contained in the Complaint fail to state a claim upon which relief can be granted.

2. As a separate and alternative affirmative defense, Defendant states Defendant is not liable to Plaintiffs pursuant to Section 42-13-1, et seq. NMSA, otherwise cited as the "Equine Liability Act."

3. As a separate and alternative affirmative defense, Defendant states that as to Count II, Paragraphs 33 through 35 of the Complaint, that the cause of action contained therein is barred by the doctrine of accord and satisfaction.

4. As a separate and alternative affirmative defense, Defendant states that the acts and damages alleged in Plaintiff's Complaint, which are specifically denied, were the result of an Act of God and not the negligence of Defendant.

5. As a separate and alternative affirmative defense, Defendant states that if it was negligent, which negligence is specifically denied, then Plaintiffs and/or other parties or non-parties not known or in the employee of this Defendant were comparatively negligent, which negligence proximately caused or contributed to cause the matters complained of in the Complaint, thereby reducing the amount of Plaintiffs' damages in an amount proportionate to Plaintiffs' and/or others' degree of fault.

6. As a separate and alternative affirmative defense, Defendant states that Plaintiffs herein suffered no damages, and/or injuries as a result of Defendant's acts.

7. As a separate and alternative affirmative defense, Defendant states that Plaintiffs failed to mitigate the damages requested in the Complaint;

8. As a separate and alternative affirmative defense, Defendant states that Plaintiffs knew or should have known of the propensity of equine animals to kick, bite, buck, bolt, be unpredictable or collide with other animals, objects, or persons and that Plaintiffs

assumed the risk of any accidental injuries resulting from the behavior of equine animals. thereby barring recovery herein;

9. As a separate and alternative affirmative defense, Defendant states that Plaintiffs' Complaint is barred by the doctrine of latches;

WHEREFORE, Defendant prays that the Complaint and each and every cause of action therein be dismissed or, in the alternative, for judgment over and against the Plaintiffs, for costs in defending against this action, and for such other and further relief as the Court may deem just.

Respectfully Submitted,

BUTT THORNTON & BAEHR PC

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I hereby certify that I have mailed a true copy of the foregoing pleading to all counsel of record this 7th day of June, 2005.

Alfred L. Green, Jr.